IN THE

# Supreme Court of the United States

OCTOBER TERM, 1977

**No. 77-971**

STATE OF NORTH CAROLINA EX. REL. SARAH T. MORROW; STATE OF NEBRASKA; AMERICAN MEDICAL SOCIETY; AND NORTH CAROLINA MEDICAL SOCIETY, *Appellants,*

v.

JOSEPH A. CALIFANO, SECRETARY OF THE UNITED STATES DEPARTMENT OF HEALTH, EDUCATION AND WELFARE; AMERICAN ASSOCIATION FOR COMPREHENSIVE HEALTH PLANNING, INC.; AND NATIONAL ASSOCIATION OF NEIGHBORHOOD CENTERS, *Appellees.*

**On Appeal From The United States District Court For The Eastern District of North Carolina**

## MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE* AND BRIEF OF *AMICUS CURIAE* PACIFIC LEGAL FOUNDATION IN SUPPORT OF JURISDICTIONAL STATEMENT

RONALD A. ZUMBRUN
ROBERT K. BEST
PACIFIC LEGAL FOUNDATION
455 Capitol Mall
Suite 465
Sacramento, California 95814

ALBERT FERRI, JR.
DONALD C. SIMPSON
W. HUGH O'RIORDAN
PACIFIC LEGAL FOUNDATION
1990 M Street, N.W.
Suite 550
Washington, D.C. 20036

*Counsel for* Amicus Curiae
*Pacific Legal Foundation*

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## MOTION OF PACIFIC LEGAL FOUNDATION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* IN SUPPORT OF JURISDICTIONAL STATEMENT

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Pacific Legal Foundation (PLF) hereby moves, pursuant to Supreme Court Rule 42, for leave to file the annexed brief *amicus curiae* in support of the Jurisdictional Statement submitted by Appellants on January 6, 1978, in the above captioned proceeding.

Pacific Legal Foundation is a non-profit, tax-exempt corporation organized and existing under the laws of California for the purpose of engaging in litigation in matters affecting the broad public interest. The Foundation has more than 20,000 contributors and supporters throughout the United States. Policy for the Foundation is set by a Board of Trustees composed of concerned citizens, the majority of whom are attorneys.

The Foundation has participated in, and has devoted a significant portion of its resources, to cases involving federal usurpation of state and local governmental functions. PLF has been a party plaintiff in *EPA* v. *Brown*, 521 F.2d 827 (9th Cir., 1975), *cert. granted* 426 U.S. 904 (1976), *vacated as moot* 97 S. Ct. 1635 (1977), and is now a plaintiff challenging the federal flood insurance program. *Texas Landowners' Rights Association* v. *Harris*, No. 77-1962 (D.D.C., filed Nov. 15, 1977). The Foundation is concerned with the growing number of federal programs which, although denominated as voluntary, are implemented through the threat of loss of federal revenues.

The accompanying brief urges this Court to note probable jurisdiction. Pacific Legal Foundation can bring to this case a diverse perspective not presently represented which will assist in obtaining full consideration of public interest issues.



Accordingly, Pacific Legal Foundation respectfully requests leave to file the annexed brief *amicus curiae*.

Respectfully submitted,

RONALD A. ZUMBRUN
ROBERT K. BEST
PACIFIC LEGAL FOUNDATION
455 Capitol Mall
Suite 465
Sacramento, California 95814

ALBERT FERRI, JR.
DONALD C. SIMPSON
W. HUGH O'RIORDAN
PACIFIC LEGAL FOUNDATION
1990 M Street, N.W.
Suite 550
Washington, D.C. 20036

*Counsel for* Amicus Curiae
*Pacific Legal Foundation*

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**On Appeal From The United States District Court For The Eastern District of North Carolina**

## BRIEF OF *AMICUS CURIAE* PACIFIC LEGAL FOUNDATION IN SUPPORT OF THE JURISDICTIONAL STATEMENT

### INTEREST OF AMICUS

Pacific Legal Foundation (PLF) is a non-profit, tax-exempt corporation organized and existing under the laws of California for the purpose of engaging in litigation in matters affecting the broad public interest.

PLF is currently a plaintiff in *Texas Landowners' Rights Association* v. *Harris*, No. 77-1962 (D.D.C. filed Nov. 15, 1977), which involves the federal flood insurance program and which presents a similar issue to that in this case. The background and interests of *amicus* are detailed in the preceding motion for leave to file this brief.

## INTRODUCTION

This case presents issues directly affecting the allocation of power between the federal government and state governments. The affirmative limitation on federal intrusions under the commerce power into state and local sovereignty established in *National League of Cities* v. *Usery*, 426 U.S. 833 (1976), should now be explicitly extended to include the spending powers of Congress, U.S. Const. art. I, § 8, cl. 1.

Laws enacted to coerce implementation of spending programs by state and local governments should be invalidated because they significantly impair the ability of state and local governments to function independently in the federal system. The issue presented for review is:

> Whether Acts of Congress which withhold previously committed funds for the purpose of coercing states into enacting legislation and surrendering control over traditional areas of local authority are consistent with the Constitutional guarantee of a republican form of government and the inherent powers of the states.



## ARGUMENT

### I. This Court's Decision Would Establish Valuable Precedent For Evaluation Of Current Legislation And For Resolution Of Issues In Cases Pending Before Lower Courts.

The issue presented herein is far-reaching; the possibility for dispensing, withholding or withdrawing of federal funds pervades numerous acts of Congress.

In this case, it is health care that is held ransom. Having encouraged the states to establish a variety of health-care programs for the treatment of a number of serious disorders, Congress is now withholding funds from those prior programs, unless and until the state enacts required legislation to implement a new or different program.

This commandeering of existing programs to force acceptance of new programs, which the community would reject on the merits, is not an isolated act. For example, in the federal flood insurance program, the Veteran's Administration is withholding V.A. loans from qualified veterans and the Federal Housing Authority is withholding home improvement loans from qualified individuals simply because the individuals live in communities which have refused to accept the direct incentives and burdens of the program. Growth in these communities is greatly restricted because of the program. Thus both individuals and the community are being coerced to accept the flood insurance program, unacceptable on its own merits, to avoid being cut out of other federal programs which were established for many years for the purposes of aiding needy veterans and encouraging home ownership, home improvement and employment.

Veterans, home owners, construction workers and communities are as seriously impacted by the coercive restrictions of flood insurance as the hemophiliacs, mentally ill, diabetics, and others with serious medical problems are threatened by termination of needed public health services. Because of this far reaching effect, and because of the potential for repetitive litigation where Congress' conditional spending power is used coercively, this Court should take jurisdiction.

### II. The Public Interest Requires This Court To Define The Limitations On Congressional Spending Powers.

In *National League of Cities* v. *Usery*, 426 U.S. 833, 852 n. 17 (1976), the Court stated:

> We express no view as to whether different results might obtain if Congress seeks to affect integral operations of state governments by exercising authority granted it under other sections of the Constitution such as the spending power, Art. I § 2, Cl. 1, or § 5 of the Fourteenth Amendment.

The Court is now squarely presented with this issue, and its resolution will affect the fabric of the American democracy. If the limitations on congressional exercise of the commerce power established in *National League of Cities* is to have any meaning, the principle must extend to the federal spending power. Statutes such as the National Health Planning and Resources Development Act of 1974, 42 U.S.C. §§ 300(k) *et seq.* (1976) [Health Planning Act], are not merely simple grants with conditions which may be rejected without significant ramifications in other programs. Rejection of a voluntary program leaves the rejecting party in the status quo. The Health Planning Act is a deliberate and calculated attempt to coerce compliance through



the termination of prior health programs. This use of the spending power moves beyond the traditional dichotomy of "voluntary" and "involuntary" programs and challenges the ability of state governments to function independently in a republican form of government.

Pacific Legal Foundation urges this Court to establish guidelines against which conditional spending statutes will be measured to insure that the constitutional limitations in the Tenth Amendment and the Guarantee Clause, art. IV, § 4, will not be transgressed.

### III. Conflicts Between Federal And State Power Require Adoption Of A Balancing Approach.

Every action by a state in adopting a federal program involves the relinquishment of some part of that state's ability to govern itself independent of federally imposed requirements. When such action is taken out of fear of retribution there has been no free choice, and it is the lack of free choice which results in the federal intrusion into the sovereign affairs of the state. By no stretch of the imagination can the Health Planning Act be said to offer free choice. As is clear from the Appellants herein, but for the coercive conditions some states would reject the program being offered.

For example, the State of North Carolina is forbidden by its Constitution from implementing the federal program. *In Re Certificate of Need For Aston Park Hospital, Inc.*, 282 N.C. 542, 193 S.E.2d 729 (1973). Therefore, Appellant North Carolina is subject to the penalty of forfeiting all federal funding for approximately fifty public health programs. This will

have an enormous negative impact upon the ability of the state to provide essential services.

Accordingly, the Foundation urges that this Court apply a three part test [1] to determine whether state sovereignty has been unconstitutionally impaired by the Health Planning Act.

First, the activity regulated by Congress should be an attribute of state sovereignty. Second, the activity should be a function essential to the separate and independent existence of the state. Third, there must be a balancing of adverse affects of the statute on the state and local government against the national interest served.

The facts in this case are well suited to the application of this three part test. First, the regulations of public health and medical care is a traditional function of the state. As this Court stated in *National League of Cities:*

> While there are obvious differences between the schools and hospitals involved in *Wirtz,* and the fire and police departments affected here, *each provides an integral portion* of those governmental services which the states and their political subdivisions have traditionally afforded their citizens. 426 U.S. at 855. (Emphasis added.)

Second, health planning is a function essential to the separate and independent existence of state governments. Public health has traditionally been recognized

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[1] Comment, *Toward New Safeguards on Conditional Spending: Implications of National League of Cities* v. *Usery,* 26 Am. U. L. Rev. 726, 729-730 (1977). This comment contains an excellent discussion of how this process will serve as a framework for demonstrating the affirmative limitation of federalism.



as a state and local function because the individual state is best suited to assess the particular needs of residents and to recognize the elements of free choice of the individual in selecting health care.

Finally, a balancing of the adverse affect of the Health Planning Act on the state government against the national interest reveals a conflict between the national goal for a more economical delivery of health care and the actual adverse effects of this statute upon approximately fifty health care programs in the State of North Carolina alone. While the national need for economical systems is laudable, surely this goal can be reached by means which is less intrusive into state and local governmental affairs. The Health Planning Act has an enormous negative impact upon the ability of states to provide essential health services.

Without a careful balancing of state and local needs against federal governmental goals, the conditional spending power of Congress will swallow up the guarantees of the Tenth Amendment and the Guarantee Clause of the Constitution. Whether confronted by federal programs regulating hospital care, state employee wages, or flood insurance, this Court must closely scrutinize the federal program.

## CONCLUSION

In that the National Health Planning and Resource Development Act of 1974 violates the Tenth Amendment and the Guarantee Clause of the United States Constitution, Pacific Legal Foundation respectfully requests this Court note probable jurisdiction and find this law to be unconstitutional.

Respectfully submitted,

RONALD A. ZUMBRUN
ROBERT K. BEST
PACIFIC LEGAL FOUNDATION
455 Capitol Mall
Suite 465
Sacramento, California 95814

ALBERT FERRI, JR.
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Suite 550
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